

1 those facilities?

2 A Of the facilities themselves, the daily operations
3 would be Altell.

4 Q Who is the contact between Alee and Altell?

5 A I don't know.

6 Q Do you know who on the Alee side is the contact,
7 who would be responsible?

8 A You mean to Altell?

9 Q Yes.

10 A Well, either Becky Jo or Terry Jones or Bob
11 Bernstein.

12 Q So one of the executive committee members?

13 A Right.

14 Q Do you know specifically who does that?

15 A I think it's been shared somewhat.

16 Q And you don't know who the person that they
17 contact at Altell?

18 A No.

19 Q Where does the money go from the New Mexico 3
20 operation?

21 A Where does the money go?

22 Q Yes. Who receives it?

23 A Mostly the attorneys.

24 (Laughter.)

25 **THE WITNESS:** I couldn't help that one.

1 (Laughter)

2 JUDGE STEINBERG: Neither could I.

3 THE WITNESS: The money goes to our operating --
4 you know, whatever expense. I mean, Terry Jones does give
5 us financial reports from time to time showing where the
6 money goes. Honestly, I am not a real numbers kind of guy,
7 and that's not where my head is. I mean, I read them over
8 and so on. But other than expenses such as attorney fees,
9 then some of the money is distributed amongst the
10 partnership.

11 Q Okay, when did the partners first start receiving
12 money out of the New Mexico 3 operations?

13 A That's -- I'm kind of guessing, but may five years
14 ago, four or five years ago.

15 Q Okay. Who collects the money that comes in? Who
16 collects it?

17 A Terry Jones does.

18 Q And where does the money come from? How does the
19 New Mexico 3 license make money?

20 A From our roaming charges through Altell.

21 Q Okay. Does New Mexico 3 -- does Alee have any
22 customers?

23 A No, we don't.

24 JUDGE STEINBERG: You mean local customers, don't
25 you?

1 MS. LANCASTER: I mean any customers.

2 THE WITNESS: Well, we have roaming customers, I
3 guess.

4 BY MS. LANCASTER:

5 Q Okay, how does that work?

6 A I don't know the mechanics of it, but I know that
7 Altell reports to our executive committee, and that's how we
8 get our money and things of that nature.

9 Q Does Alee have any contracts with any subscribers?

10 A I don't know. But based on my knowledge in
11 general, subscribers would be local customers. **So** I would
12 say no.

13 Q Okay. Since you have started receiving money from
14 the New Mexico 3 operation, how many money, approximately,
15 have you received?

16 A That's hard to say. **You** know, most checks seem **to**
17 be in the area of, I'd say, 13 to 20 thousand dollars. The
18 first check was more, it was like 39,000, I believe, for my
19 eight percent interest, and they varied in between that.

20 Q And subsequent to the first check that you believe
21 was about five years ago, they varied between 13 and 20
22 thousand?

23 A I would say yes.

24 Q And how often do you receive checks?

25 A Quarterly

1 Q And what was your initial investment personally?

2 A I believe it was 20,000.

3 Q Twenty thousand?

4 A Um-hmm.

5 JUDGE STEINBERG: That's a yes?

6 THE WITNESS: Twenty thousand, yes.

7 BY MS. LANCASTER:

8 Q Well, all right, that was your initial investment,
9 and then did -- what was your total investment? Do you
10 know?

11 MR. HILL: Your Honor, I object to this line of
12 questioning --

13 JUDGE STEINBERG: Okay, I'll overrule it. It's
14 directly relevant to -- Alee may make mistakes in the
15 future, but Alee, because of the high price it has already
16 paid with the **loss** of the New Mexico license, it goes
17 directly to price that this individual unfortunately has
18 allegedly paid as the result of the Algreg proceeding.

19 But if you want to finish the objection, you might
20 persuade me if that's not the objection you're making. But
21 I mean, I think that's where you -- it was relevance.

22 MR. HILL: Yes.

23 JUDGE STEINBERG: Okay, I didn't mean to cut you
24 off, and I apologize.

25 THE WITNESS: So what -- ma'am?

1 BY MS. LANCASTER:

2 Q What has been your total --

3 A Well, it was the initial 20,000, and I think there
4 has been about 14 capital calls since that time in the
5 beginning of everything until we had enough cash flow to pay
6 all our legal expenses monthly. And if I remember
7 correctly, they were in the range of 12 to 14 hundred per
8 capital calls, and I missed one.

9 Q So you paid 12 to 14 hundred 13 times?

10 A Yes.

11 MS. LANCASTER: We have an accountant back here.
12 He is going to tell us in a minute how much that is.

13 BY MS. LANCASTER:

14 Q So you have at this point recouped your initial
15 investment; is that correct? Your total investment; is that
16 correct?

17 A Depending on how you look at it.

18 Q Well, what's that mean?

19 A Well, what happens is that when we receive these
20 checks, okay, let's just assume that I receive let's say --
21 I'll just use a round figure of \$100,000, my K-1 would show
22 more because some of the expenses, I believe, for attorney
23 fees would not be considered, you know, deductible from our
24 expenses. So I guess, and again I'm a little vague on this,
25 but I think what's happened is that the amount of money I

1 received and what my income tax form showed was a lot more.

2 **So**, you know, dollar for dollar, I received my
3 money back, but what happened is it threw a lot of my
4 regular income into a much higher tax bracket. And as a
5 result, I'm not really sure if I have made any money.

6 Q **So** you are complaining because you're making too
7 much money that your tax bracket has gone up? Is that what
8 I understand your complaint to be?

9 MR. HILL: I object to that characterization, Your
10 Honor.

11 JUDGE STEINBERG: If it's incorrect, the witness
12 will say so.

13 THE WITNESS: I'm sorry?

14 BY MS. LANCASTER:

15 Q Is that what I understand your complaint to be?

16 A Well, it's not a complaint. It's just that you
17 asked me if I really have made any money, and I'm not sure
18 if I have.

19 Q Let me see, my math is kind of bad, but I want to
20 make sure, let's see if you have. Let's assume that your
21 capital calls were \$1200, or we can assume they were **\$1300**,
22 and you have done 13 of them, right?

23 My calculations show that that would total
24 \$16,900, so that would be the maximum capital call based on
25 what your testimony was. And you said your initial

1 investment was \$20,000. So 20,000 plus the 69 is going to
2 36.9 was your total investment in the New Mexico license.

3 And I believe you stated that your first check was
4 for \$39,000, and that you have received from 13 to 20
5 thousand dollars per quarter subsequent to that.

6 Did I summarize your testimony correctly?

7 A Yes.

8 Q Consequently, you easily made up your initial
9 investment with your first check; is that correct?

10 A Yes.

11 MS. LANCASTER: One second, please.

12 (Pause.)

13 BY MS. LANCASTER:

14 Q When I asked you about whether or not you had been
15 contacted regarding interrogatories and asked, you know, the
16 questions that the Bureau had filed in this particular
17 proceeding, I believe you stated that you had not been
18 contacted except at some point about six weeks ago you were
19 asked had you ever been convicted of a felony.

20 Were you contacted by anyone else regarding your
21 answers to the discovery in this case?

22 A Outside of our executive committee?

23 Q Anyone, period. I mean, other than that one
24 little contact you told me about --

25 A Right, right.

1 Q -- where they sent you a form --

2 A Right.

3 Q -- six weeks ago, were you ever contacted
4 regarding the discovery in this case --

5 A No.

6 Q -- and asked anything about it?

7 A No.

8 Q Is there a particular person who would generally
9 contact you off of the executive committee who sends out
10 such notices?

11 A I would say most things came from Becky Jo.

12 Q Okay. Tell me what Alea has done since the
13 decision in Algleg to change its ways and to make sure that
14 it follows the Commission's rules and that there is no lack
15 of candor or misrepresentations made to the Commission.

16 A Well, I think ever since the ruling, okay, and
17 what happened at that, is that, you know, we have been very
18 aware of the fact of the ruling and my responsibility for
19 it. And I think, you know, we even more so or certainly,
20 naturally had to make sure that we crossed all our "t's" and
21 dotted all our "i's," and we still have to rely on counsel a
22 little bit. It was reviewed, whatever the documents might
23 have been in particular, we have had another counsel that
24 would help us out in those proceedings if we felt it's
25 necessary.

1 So what I am saying is that I think we have been
2 very straight ahead and I think the record shows that too.

3 Q In what way?

4 A Well, as I understand, I don't think there has
5 been any -- we are certainly not perfect, and nobody is, but
6 I don't think there has been any citations of any sort
7 regarding our running of the center -- I'm sorry -- the cell
8 site since that time.

9 Q In your opinion, if you have not gotten any
10 citations as you say, it necessarily follows that you have
11 been doing everything correctly?

12 A Yes.

13 Q Are you aware that Alee filed a renewal
14 application for the New Mexico 3 license in October of 2000?

15 A Yes.

16 Q Did you ever see a copy of that renewal
17 application?

18 A NO.

19 Q Have you ever seen a copy or had any input
20 regarding the request for stay that was filed by Alee -- let
21 me see -- you are familiar that there is a request for stay,
22 correct?

23 A Yes.

24 Q Did you have any input into that or was there any
25 discussion about that filing of that document?

1 A Not that I recollect.

2 Q And how about the application for review that was
3 filed by Alee on July 1, 2002, are you aware of that?

4 A No.

5 Q Was there ever any discussion about it?

6 A When you say application for review?

7 Q Yes.

8 A I'm not sure if I know what you mean.

9 Q There is a document entitled "Application for
10 Review" filed on behalf of Alee by Philip J. -- well, the
11 actual signature is Howard M. Lieberman.

12 Are you familiar with Howard Lieberman?

13 A Yes.

14 JUDGE STEINBERG: It's Lieberman.

15 MS. LANCASTER: Lieberman, is that how it's
16 pronounced. I can't read his signature so I'm taking a
17 guess.

18 JUDGE STEINBERG: He's practiced long and hard so
19 that you couldn't do that.

20 (Laughter)

21 MS. LANCASTER: And he's very successful.

22 BY MS. LANCASTER:

23 Q So you are unaware of what that application for
24 review is?

25 A Yes, but I knew that there was proceeding going on

1 with Howard regarding the second license.

2 Q What did you know?

3 A The only thing I know is that we received the
4 license and his feeling was that it's a separate new entity,
5 and I guess our hope is that it would be accepted.

6 Q Now I'm confused. Can you explain that? You
7 received what license?

8 A From what I understand, we applied for a second
9 license because our license came up for renewal.

10 Q You filed a renewal, is that what you are saying
11 of --

12 A Yes.

13 Q -- the New Mexico 3 license?

14 A Right.

15 Q Okay.

16 JUDGE STEINBERG: When you say "new license,"
17 think of a driver's license.

18 THE WITNESS: Right, it's a renewal.

19 JUDGE STEINBERG: You go to your driver's license,
20 you go to the DMV in New Jersey, and renew your driver's
21 license. Do you consider the license that you receive from
22 them to be a new license? I'm just trying to figure out
23 your thinking.

24 THE WITNESS: Right, right, right.

25 JUDGE STEINBERG: And is that how you thought of

1 the renewal license for New Mexico 3 as a new license or are
2 you talking about something different, or are you confused?

3 THE WITNESS: I'm a little confused.

4 JUDGE STEINBERG: Okay.

5 THE WITNESS: I would sure like to move this along
6 if I may.

7 JUDGE STEINBERG: Well, it's up to Ms. Lancaster.

8 MS. LANCASTER: But I'm not going to let **you** leave
9 it.

10 THE WITNESS: Okay.

11 JUDGE STEINBERG: I didn't think so.

12 BY MS. LANCASTER:

13 Q Because I want to know what your understanding **is**.
14 I want to know what was discussed with the partners and how
15 good an understanding the partners have of these issues.

16 A Right.

17 Q And you're the partner on the stand at the moment.

18 A Right, I understand.

19 Q So you are the one that needs to tell me that.

20 A All right. So the question is what specifically?

21 Q I want to know what you know about the request for
22 stay and what's going on right now with the New Mexico 3
23 license.

24 A Well, the request for stay, as I understand it, is
25 that since we are running it now, because we still **are**,

1 okay, that we are able to continue running it until they
2 find someone else as opposed to closing us down and having
3 no cell activity.

4 Q Okay. **You** are aware that Alee filed for renewal
5 of the New Mexico 3 license?

6 A Yes, I am.

7 Q Are you aware that that renewal was granted? Was
8 it granted?

9 A Whether it was granted. I just don't know, don't
10 know. I'm getting confused now.

11 Q I am not trying to confuse you.

12 A **No**, I know you're not. I know you are not. But
13 you know, I -- I don't know.

14 Q Have there been any presentations to the
15 partnership regarding the renewal of the New Mexico 3
16 license?

17 A Well, I remember we had a short meeting with
18 Harold Lieberman, and his point of view was that he looked
19 at it, and of course, again we are relying on his counsel,
20 that it was looked at as a separate license now, and
21 technically all the paperwork would be in compliance with, I
22 guess, the rules or whatever, like, for example, the
23 partnership and so on.

24 So I think -- my impression is that it was looked
25 at as a totally different license, not a renewal in the

1 sense of like a driver's license because a driver's license,
2 I would say, is just a continuation of the one that I had
3 already.

4 Q So it's Alee's position at this point that it does
5 not have to terminate -- does not have to close down the New
6 Mexico 3 license; is that correct?

7 A Based on the renewal. I don't know, don't know.

8 Q Who do you rely on to tell you what Alee's
9 position is on these matters?

10 A Our executive committee.

11 Q And as far as you know has the executive committee
12 ever made a recommendation to the Alee partnership that has
13 been turned down by the partnership?

14 A Not that I'm aware of.

15 Q So pretty much whatever they bring to -- whatever
16 recommendations they bring to you, you guys accept; is that
17 correct?

18 A Well, yes, but with -- there has been questions
19 from time to time. I don't know exactly what they are. I
20 remember one time a vote was pretty close. I think many
21 times they will present us -- you know, like the both sides
22 of the coin. But pretty much we rely on them, and I think
23 we have received good information from them. So most times,
24 you know, what they recommend we have done.

25 Q Do you consider the position that Alee has taken

1 regarding the New Mexico 3 license not being terminated, do
2 you consider that a major decision, a major subject for the
3 partnership?

4 A Yes.

5 Q And has there been any discussion among the
6 partners themselves regarding what position to take
7 regarding that issue?

8 A Not that I'm aware of.

9 JUDGE STEINBERG: You said that most times the
10 partners go along with the recommendation of the executive
11 committee; is that correct?

12 THE WITNESS: Yes.

13 JUDGE STEINBERG: Do you remember an instance when
14 they didn't?

15 THE WITNESS: The one I do remember was a capital
16 call, I believe, where it was getting to the point where
17 there was a lot of them, and I think that we were trying to
18 make some decisions whether to go to the next level of
19 litigation or not. And if I remember correctly, that was
20 one of the ones that was close, and I remember thinking in
21 terms of, well, we are in it this far, we might as well go
22 the rest of the way.

23 JUDGE STEINBERG: Okay, it was close but did
24 ultimately that vote go along with the executive committee's
25 recommendation?

1 THE WITNESS: Yes.

2 BY MS. LANCASTER:

3 Q Are you aware of when amendments or filings from
4 the FCC on behalf of Alee are made?

5 A Not exactly, no.

6 Q Okay. When there has been a capital call in the
7 past, it's my understanding, and you please correct me if I
8 misstate this in any way, that the partners are to send in
9 their payment, whatever the assessed amount is within 30
10 days.

11 A Um-hmm.

12 Q And if after a second letter they don't comply and
13 send in their payment, other partners are given an
14 opportunity to make up that payment.

15 A Right.

16 Q Am I correct so far?

17 A Yes.

18 Q And my understanding is that the other partner or
19 partners, whoever makes up the delinquent amount, then their
20 percentage of the partnership is increased, and the partner
21 who failed to pay the delinquent amount, that partner's
22 percentage of the partnership is -- did I say that wrong?

23 A No, not that I can see.

24 Q Let me start that. My understanding is that the
25 partners who pay the delinquent amount, they have an

1 increased percentage of the partnership --

2 A Um-hmm.

3 Q -- because of the payment, and the partner who did
4 not make the payment like he or she was supposed to, their
5 percentage of the partnership is decreased; is that correct?

6 A That's right.

7 Q And this went on for at least 14 times?

8 A Yes.

9 Q You have had 14 capital calls; is that correct?

10 A Um-hmm.

11 JUDGE STEINBERG: You have to answer yes or no.

12 THE WITNESS: Yes. I'm sorry. Yes.

13 BY MS. LANCASTER:

14 Q When was the last capital call?

15 A You know, again, if we started receiving checks
16 five years ago, then the last capital call had to be shortly
17 before that, which seems to make sense to me.

18 Q Okay. When was the last time the Commission was
19 given any notice regarding change in ownership percentages
20 of the partnership?

21 A The last time, I don't know.

22 Q Has it ever been done?

23 A I believe it has.

24 Q When do you think it was done?

25 A Well, I would say shortly after the percentage

1 changed, but --

2 Q What year?

3 A -- you know, I didn't see it. I am thinking in
4 terms of '96, maybe. If I go back -- again, when the
5 capital calls ended and when their checks started, some time
6 after that the percentages might have been changed. But
7 again, I didn't see it directly or when it was done or
8 anything like that.

9 Q Would you be surprised if I said the last one I
10 found was in 1992?

11 A A percentage change?

12 Q Yes.

13 A The last one? Well, not necessarily because I --

14 Q No, the last time it was reported to the
15 Commission, would that surprise you?

16 A I don't know.

17 Q You don't know if you're surprised or not?

18 A Because I don't know exactly if I have my years
19 correct, I mean.

20 MS. LANCASTER: One second.

21 JUDGE STEINBERG: What do you teach?

22 THE WITNESS: I teach entrepreneurship, marketing.

23 MR. EVANS: I'm sorry, Your Honor. That was a
24 question I was going to ask but I didn't hear his answer.

25 MS. LANCASTER: And I didn't hear the question or

1 the answer.

2 JUDGE STEINBERG: Well, I asked what he taught,
3 and the answer was?

4 THE WITNESS: Entrepreneurship and marketing.

5 MS. LANCASTER: I have no further questions, Your
6 Honor.

7 JUDGE STEINBERG: Mr. Evans.

8 MR. EVANS: Ms. Lancaster has stolen what little
9 thunder I had for this, Your Honor, so I will be brief.

10 CROSS-EXAMINATION (CONT'D)

11 BY MR. EVANS:

12 Q First of all, Mr. Malanga, are you a United States
13 citizen?

14 A Yes.

15 Q Has anybody on the executive committee ever asked
16 you whether you were a United States citizen?

17 A Directly, no.

18 Q Has anybody else asked you in connection with Alee
19 whether you are a U.S. citizen?

20 A No.

21 Q Even at the very beginning, did anyone ask you,
22 Mr. Kane or anyone else?

23 A No, but I maybe can clarify a little. I do
24 remember one of our early, early meetings before, probably
25 before we even won or New Mexico license, not the territory,

1 I do remember a meeting that he said to the general group,
2 which was probably several hundred people, that if you are
3 not a United States citizen, you cannot be part of this.

4 Q I'm sorry. To the general group. How many people
5 were in the general group?

6 A Well, this is -- I would say a couple hundred,
7 maybe.

8 Q So this was not just limited to the partners in
9 Alee, this was a larger group of people?

10 A Right, with TCC and all the other potential
11 partnerships.

12 Q I see.

13 A This was the beginning when this was being
14 presented to us.

15 Q Okay. And this meeting that you are talking
16 about, was that before Alee was actually formed --

17 A Yes.

18 Q -- as a partnership?

19 A Yes. Yes.

20 Q Let me direct your attention for a moment to the
21 second page of your testimony -- I'm sorry -- the third
22 page, line 3 near the top.

23 A Right.

24 Q It says, "I have listened to our management
25 committee."

1 A Right.

2 Q Who is the management committee?

3 A Well, executive committee.

4 Q So by management committee, that's what you were
5 referring to?

6 A Right.

7 Q Okay. You say you have listened to your
8 management committee and our advisors and you have asked
9 questions.

10 Now, in response to some questions from **Ms.**
11 Lancaster, you indicated that you were not told who the
12 alien was.

13 A Right.

14 Q When did you find out that there was an alien?

15 A I believe it was one **of** our very first meetings,
16 that there was -- we were told that there was a problem, but
17 it was taken care of. So my impression was that there was a
18 alien issue, but it was taken care of.

19 Q And in time, when would that have occurred?

20 A Pardon?

21 Q In terms of a date, approximately when did that
22 occur?

23 A I believe that was probably one our very first
24 meetings, December **of** 1990, I think, or -- I don't remember
25 exactly how all the things came down, but I know it was one

1 of our first meetings when we had won, our partnership had
2 won the New Mexico, and we were getting together, as I
3 recollect. You know, it's a long time ago.

4 Q Okay. And you understood at that meeting that
5 there was a problem regarding an alien member of your
6 partnership?

7 A Right.

8 Q Wouldn't it have been a natural question to ask
9 who is the alien?

10 A Yes.

11 Q Why didn't you ask that?

12 A Because we were told it was taken care of.

13 Q Do you know if anybody else at the meeting asked
14 who the alien was?

15 A Not that I recollect, but again, it was 12 to 14
16 years ago.

17 Q Tell me just in your own words what the function
18 of the executive committee is.

19 A I think the executive committee is -- their
20 function is to deal with Altell, for example, and take care
21 of any FCC paperwork that needs to be taken care of and so
22 on. **So** you might say from our angle other than running the
23 system the executive committee takes care **of** all the day-to-
24 day operations and so on.

25 Q Okay. **Do** they supervise the manager **of** the

1 system, meaning Altell?

2 A Well, I don't know exactly how that would work,
3 but certainly Altell is responsible to us as a management of
4 the cell site.

5 Q Well, Altell manages the system now, right?

6 A Right.

7 Q And they report to the executive committee, is
8 that right?

9 A Right. Right.

10 Q Okay. Now when did the executive committee come
11 into existence?

12 A I believe, again, in the very beginning; around
13 1990, '88, something like that, '89.

14 Q '88, '89 or '90? You're just not sure?

15 A Right.

16 Q How was it decided to have an executive committee?

17 A As I recollect, it was decided on our own in a
18 sense Allan Kane was our agent, I guess you would put him
19 in that category, but we kind of felt since he was not a
20 partner that we should have a committee of sorts that would
21 deal with him directly as opposed to the rest of us.

22 Q Okay. And was it the executive committee's job at
23 that point to supervise Mr. Kane?

24 A I don't know if I would call it supervision, but
25 to work with him closely

1 Q Well, I mean, what did you understand their job to
2 be with respect to Mr. Kane?

3 A I think, just based on his advise, take care of
4 the day-to-day operations. For example, if there is
5 something that needed to be signed, obviously, since he's
6 not an owner he wouldn't be able to, but somebody from the
7 partnership itself would be able to. That's as I understand
8 it.

9 Q Okay. Well, is that a similar function that the
10 executive committee has now with respect to Altell?

11 A I would say yes.

12 Q Okay. **So** you wouldn't believe that the executive
13 committee's job is to be sure that what the manager is
14 telling you is correct?

15 A No. From what I understand, Terry Jones many
16 times has had to correct them; Altell, for example. Now I
17 don't know exactly how that works, but I know that -- my
18 impression is that he keeps close tabs on them.

19 Q Well, are you counting on him to do that?

20 A Am I?

21 Q Yes.

22 A Yes.

23 Q To be sure that you're not misled by Altell, let's
24 say?

25 A Right.

1 Q Well, were you counting on the executive committee
2 to be sure you weren't misled by Mr. Kane?

3 A I don't think at that time it was -- it was the
4 relationship. In other words, like we assumed that he was
5 telling us the right things. I guess what I am trying to
6 say is you don't enter that looking to be misled by someone.

7 Q Well, let me ask it this way. Do you think that
8 the executive -- there was an executive committee in place
9 at the time that Mr. Kane was still involved --

10 A Right.

11 Q -- with your partnership, right?

12 Do you feel that the executive committee did a
13 good, capable job at that point of overseeing Mr. Kane?

14 A Yes. And also they were instrumental in the fact
15 that he was let go by us.

16 Q Okay. Do you review the documents that are filed
17 by Alee with the **FCC**?

18 A Not that I'm aware of, no.

19 Q Applications and amendments and **so** forth, you
20 don't review those?

21 A No.

22 Q And I think you have indicated you didn't review
23 the application for review that's been filed?

24 A No.

25 Q Well, let me ask you something. At the end of